ANNE BURNETT TANDY ET AL.

IBLA 76-722 Decided December 16, 1977

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting application for renewal of oil and gas lease NM 074939.

Affirmed.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Renewals -- Oil and Gas Leases: Twenty-Year Leases -- Oil and Gas Leases: Unit and Cooperative Agreements

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

APPEARANCES: Fred A. Watson, Esq., Watson and Watson, Artesia, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This is an appeal from the July 8, 1976, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting Appellants' application for renewal of oil and gas lease NM 074939.

The lease was issued for a term of 10 years beginning June 1, 1966, with a preferential right to renew for successive terms of 10 years. The lease was a renewal of an earlier 10-year lease which originated from a 20-year lease. Effective August 1, 1967, the lease joined and remains subject to the Grayburg-Jackson (San Andres) Unit Agreement authorized pursuant to the applicable provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(j) (1970). The application for a 10-year renewal was filed February 27, 1976.

As authority for its rejection of the renewal application, the State Office cited Texaco, Inc., 76 I.D. 196 (1969), which held that a 20-year lease which is subject to a unit agreement at the end of its term may not be renewed but may only be extended pursuant to the following provisions of § 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j):

> Any lease issued for a term of twenty years, or any renewal thereof, * * * that has become the subject of a cooperative or unit plan of development or operation * * * shall continue in force until the termination of such plan. Any other lease issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan * * * shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. * * * Any lease which shall be eliminated from any such approved or prescribed plan, * * * and any lease which shall be in effect at the termination of any such approved or prescribed plan, * * * shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

This quoted language was enacted by the August 8, 1946, amendments to the Mineral Leasing Act, 60 Stat. 950, 953.

[1] The issue in the instant case is whether continued tenure of a unitized 10-year renewal lease is governed solely by the extension provisions quoted above, or whether the lessee enjoys an option to renew the lease for another 10-year term, even though the lease remains committed to the unit. A related question arose in H. Leslie Parker, 62 I.D. 88 (1955), which held that a 20-year lease, issued prior to the 1946 amendments, which joined a unit but which left a unit before the end of its term, enjoyed an extension beyond that term due to production. Parker ruled that this extension, conferred by the 1946 amendments (discussed infra), was available to the lessees notwithstanding their failure to notify the Department that they wished to have the lease governed by the 1946 amendments as provided in section 15 of those amendments (discussed infra), rather than by prior law. In reaching his decision in Parker, the Acting Solicitor stated that the lessees had the option to renew their lease at the expiration of the 20-year term pursuant to prior law as Provided in section 15 of the 1946 amendments, or to have their lease extended by the new provisions relating to unitized leases.

Texaco held that the option of renewal was not available for the leases which were still within a unit at the end of their terms, noting that in Parker, the lease had left the unit prior to the end of its term. In ruling that the continued tenure of unitized leases was to be governed solely by the provisions of 30 U.S.C. § 226(j), Texaco noted that the preferential right to renewal from its inception was expressly made subject to other provisions of law, and ruled that the provisions of 30 U.S.C. § 226(j) constitute such other statutory provision which overrides the right of renewal. This Board applied the Texaco doctrine in Martin Yates III, 7 IBLA 261 (1972), and Anne Burnett Tandy, 7 IBLA 356 (1972). Texaco was distinguished and Parker applied by a divided Board in Omaha National Bank, 11 IBLA 174 (1973), which allowed a second renewal of a 10-year renewal lease which had left a unit before the end of its term. The separate opinions generally expressed the view that Parker and Texaco could not be reconciled. The Texaco decision was cited favorably in dictum in State National Bank of El Paso, Texas, Trustee, 12 IBLA 354, 356 (1973), but the various views as to Texaco were mentioned in Marathon Oil Company, 19 IBLA 1 (1975), a case which was decided on other grounds.

Appellants contend that the decisional law is inconsistent and can only be harmonized on the basis of arbitrary distinctions. Accordingly, they ask that we reappraise the Texaco doctrine.

The existing state of the law can be summarized as follows: if a 20-year lease or renewal thereof is in a unit at the end of its term, the lease will be extended only until the termination of the plan, 2 years thereafter, and so long thereafter as oil or gas is produced in paying quantities, as Provided in 30 U.S.C. § 226(j) (Texaco, Martin Yates III, and Anne Burnett Tandy); if a once-unitized 20-year lease or renewal thereof is no longer in a unit at the end of its term, it may be renewed or it may be extended by production (H. Leslie Parker and the majority in Omaha National Bank).

Because Appellants' lease was in the unit at the end of the renewal term, the case comes squarely within the Texaco, Martin Yates III, and Anne Burnett Tandy precedents. What Appellants are asking is approval of another 10-year renewal pursuant to the terms of the lease and, at the same time, continuing the lease within the unit. We agree with the reasons stated in Texaco, but make the following comments in response to Appellants' contentions. In attacking the Texaco and other precedents cited above, Appellants first contend that the proviso in section 17(j) of the Mineral Leasing Act does not "otherwise provide by law," so as to defeat the lessee's right to apply for a 10-year renewal of a lease committed to a unit. This argument calls upon us to ascertain the legislative intent in providing extensions for unitized leases, and this requires an examination of the history of those provisions.

Section 13 of the Mineral Leasing Act of 1920, 41 Stat. 437, 441, authorized the Secretary of the Interior to issue oil and gas prospecting permits to qualified applicants. If a permittee discovered valuable deposits of oil or gas in the permit area, section 14 provided that the permittee could lease one-fourth of the land in the permit area "for a term of 20 years upon a royalty of 5 per centum * * * with a right of renewal as prescribed in section 17 hereof." Section 14 also provided that the permittee had a preference right to lease the remainder of the land within his permit at a 12-1/2 percent royalty.

Section 17 provided in 1920 as follows:

> Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods. [Emphasis added.]

The ensuing decade was highlighted by the overproduction and wastage of oil and gas, and the need for some conservation measures became clear. Often, a pool would be carved into several leases. Each lessee would sink as many wells as possible to maximize short-term recovery to compete with his neighbor and prevent his lease from being drained. These competitive incentives resulted in overdrilling which lowered the pressure of the fields so that much oil was no longer recoverable. Unit agreements would allow lessees to combine for the more orderly exploitation of an oil or gas field. By eliminating the competition among lessees sharing a field, wasteful offset drilling would be curtailed and drilling patterns would be developed to maximize the long-term potential of a field.

Temporary authority for approving unit agreements was first established by the Act of July 3, 1930, 46 Stat. 1007. With slight modification, that provision was made a permanent amendment to the Mineral Leasing Act by the Act of March 4, 1931, 46 Stat. 1523-1524, which amended section 17 to read in pertinent part as follows:

> Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the department having jurisdiction thereof, unless otherwise provided by law at the time of the expiration of such periods: Provided, That any lease

> heretofore or hereafter issued under this Act that has become the subject of a cooperative or unit plan of development or operation of a single oil or gas pool, or area, or other plan for the conservation of the oil and gas of a single pool or area, which plan has the approval of the Secretary of the department or departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan: And Provided further, That said Secretary or Secretaries shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance.

Congress felt that unitization would only work if lease tenure were continued until termination of the unit plan, but an extension provision would not have been necessary if the preference right of renewal were sufficient to assure continued tenure. The perceived inadequacy of the preference right of renewal is evidenced by the Report of the Senate Committee on Public Lands and Surveys:

> The unit-operation plan is cooperative and not competitive and the drilling and operating program disregards all property lines within the pool, seeking economy in expenditures and large recovery of resources rather than the usual haste and consequent waste. Necessarily, a longer life of the field being promoted, it is essential that the Government lessees have the assurance of a tenure beyond 20 years; hence the amendment to section 17 is absolutely necessary.

Report of the Senate Committee on Public Lands and Surveys, S. Rep. No. 1087, 71st Cong., 2d Sess. at p. 2.

The Act of August 21, 1935, 49 Stat. 674, resulted from dissatisfaction with the 1920 experiment with permits and low royalty leases. The permit system was scrapped, and no more permits were to be issued except for applications that had been pending 90 days prior to the effective date of the legislation, and 20-year leases were no longer to be issued except on outstanding permits. Instead, 5-year and 10-year leases were to be issued. Such leases could be extended beyond their terms so long as oil or gas were produced in paying quantities. This Department's report on the 1935 amendments indicated that one of the reasons for scrapping the 20-year renewable leases was that the preference right of renewal was not adequate to assure continued lease tenure where there was production or to permit conservation in producing oil and gas:

> Oil and gas leases issued under the 1920 law are for a term of 20 years with a preference right to renewal for successive periods of 10 years on such terms and conditions as the Secretary of the Interior may impose. There being no assurance of tenure or terms beyond the first 20-year period lessees attempt to produce all possible oil and gas within that period. In the case of oil and gas leases on private lands, it is customary to grant leases for a definite period of time and so long thereafter as oil or gas is produced in paying quantities. A lessee may thus adjust his rate of production to the market demand without fear of loss. The cost of drilling wells and the hazards involved in developing oil and gas leases are great. In view of the existing overproduction of crude oil and the necessity for curtailing production from a few percent to as much as 80 percent or more of the potential productive capacity of wells it seems only reasonable that the term of the lease should be for the productive life of the wells thereon, thus avoiding the necessity of producing all oil possible within a prescribed term regardless of conditions in the industry.

Report of the Department of the Interior. This report was included in both committee reports. S. Rep. No. 1158 at p. 4 and H.R. Rep. No. 1747 at p. 4, 74th Cong., 1st Sess.

The 1935 amendments retained the unitization provisions of the 1931 amendments, but limited the extension of unitized leases for the life of the unit to 20-year leases, 1/ and made no provision for the extension of the new 5- and 10-year leases which joined units:

> Leases issued prior to the effective date of this amendatory Act shall continue in force and effect in accordance with the terms of such leases and the laws

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1/ Although the provision is limited to leases issued prior to the amendments, it is applied to 20-year leases issued after the amendments on outstanding permits under section 14 of the Act as amended in 1935, 49 Stat. 676. Although the 5- and 10-year leases could not be extended pursuant to this provision, such leases could be independently extended by production, and such leases which were members of producing units were extended by production on their own terms prior to the 1946 amendments rather than by any provision relating to unitized leases. See General Petroleum Corp., 59 I.D. 383, 387 (1947).

> under which issued: Provided, that any such lease that has become the subject of a cooperative or unit plan of development or operation, or other plan for the conservation of the oil and gas of a single area, field, or pool, which plan has the approval of the Secretary of the Department or Departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan: And Provided further, that said Secretary or Secretaries shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance.

The Texaco doctrine notes that the renewability of 20-year leases by statute is expressly made subject to other provisions of law, and the doctrine holds that the extension provisions for unitized leases constitute such other provision of law. Texaco draws significance from the fact that in the 1931 and 1935 amendments, the extension provision appeared in the form of a proviso. Texaco, supra at 203, rejected the interpretation that the proviso established an added measure for the continuation of 20-year unitized leases rather than a substitute measure:

> Such an interpretation, however, is not in accord with the effect normally to be attributed to a proviso in a statute, for a proviso generally has the effect of excluding or excepting something from the provision immediately preceding and does not extend or enlarge that provision.

Appellant herein challenges this statement of the rule for construing provisos, contending that a proviso may enlarge rather than restrict the effect of the preceding language where Congress so intended.

However, in determining the effect of the proviso, we must be mindful of Congress' regard of the preference right of renewal vis-a-vis the provision for extension of unitized leases. Appellants contend that the only purpose of the extension was to assure continuity of unit ownership even though individual lessees might neglect to file renewal applications, but this argument misconceives the limited nature of the preference right for renewal, an application for which was still subject to denial by the Department if it determined in its discretion that the land should no longer be leased. Thus, without an extension provision, there would be a distinct possibility of nonrenewal of a unitized lease even if an application for renewal were timely filed. Because this possibility would exist without an extension provision, Congress perceived that lessees would still endeavor to produce all the oil and gas possible during the primary term, thereby glutting the market but ultimately diminishing the recovery from the field, as the committee reports, supra, suggest. Thus, nothing in the legislative history suggests that Congress intended to retain the preference right of renewal for unitized leases in addition to the extension provision for the life of the unit which Congress clearly considered to be a superior form of continuing lease tenure. In view of Congress' attitude toward the preference right of renewal, it is clear that Congress would not have regarded the exclusivity of the extension provision as a penalty or disincentive to unitization. Accordingly, we adhere to Texaco's determination that the preference right of renewal is no longer available to a lease which is in a unit at the end of its term.

Appellant contends that the Department's decisions are not consistent, noting that under Omaha National Bank, supra, one whose lease which has left a unit before the end of its term may exercise a preference right of renewal, while one whose lease which is still in a unit at the end of its term may not exercise the preference right of renewal under the Texaco doctrine. However, there are several reasons for the difference in treatment of the two different leases: the extension of a lease which has left a unit before the end of its term is governed by a separate statutory provision than the extension of a lease which is in a unit. As we have noted, 20-year leases which are in units at the end of their terms are governed by the provisions added by the 1935 amendments; however, the extension provision for leases which have left units was not added until 1946. 60 Stat. 953. The 1946 amendments are subject to the following provision which does not apply to those provisions which were included in the 1935 amendments:

> Sec. 15. No repeal or amendment made by this Act shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at the time of its acquisition; but any person holding a lease on the effective date of this Act may, by filing a statement to that effect, elect to have his lease governed by the applicable provisions of this Act instead of by the law in effect prior thereto.

60 Stat. 958. Because of section 15, the extension provision for leases which had left units did not operate as a substitute measure as did the extension provision for leases in units which had been enacted earlier. Thus, the distinction between Texaco on the one hand and Omaha and Parker on the other is not the result of inconsistent interpretation; the distinction is inherent in the legislation itself.

Furthermore, there is a distinction due to the changed legal status of a lease while it is within a unit. While subject to a unit, the lease is excepted in determining holdings or control restrictions provided by the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j). Also, the Secretary is authorized, with the consent of the holders of leases within a unit, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements. Id. Thus, while a lease is committed to a unit plan, its basic terms are governed by any superseding terms of a unit. Thus, it seems somewhat anomalous to suggest that a lease committed to a unit may be renewed under possibly different terms under another provision of the law even though the unit provisions must govern. Such a possibility does not arise once the lease leaves the unit as it no longer is subject to any changes in its terms mandated by the unit agreement but is governed by its own terms and applicable statutory and regulatory provisions.

Appellants' contention that Texaco changed an established departmental policy is without merit because Texaco is the first time that the issue had been presented at the departmental level, and thus no established departmental policy could have existed. As Texaco shows supra at 199, there had been no consistent BLM practice. At least some BLM State Offices had refused renewal where the lease remained within a unit. In any event, any practices which may have developed at the State Office or Bureau level were subject to correction by higher departmental authority, such as that exercised in the Texaco decision. The fact that Appellants joined the unit before the Texaco decision does not entitle them to a renewal which is not authorized by statute. Texaco was not a decision which operated only prospectively; it resolved a case involving a lease which had a long-standing commitment to a unit. Because Texaco involved a matter of statutory interpretation, the decision is precedent for every case which is governed by the statute itself.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

For the reasons stated in Martin Yates III, 7 IBLA 261 (1972), I concur in the result herein. See also Omaha National Bank, 11 IBLA 174, 191-93 (1973) (dissent).

Joseph W. Goss,
Administrative Judge